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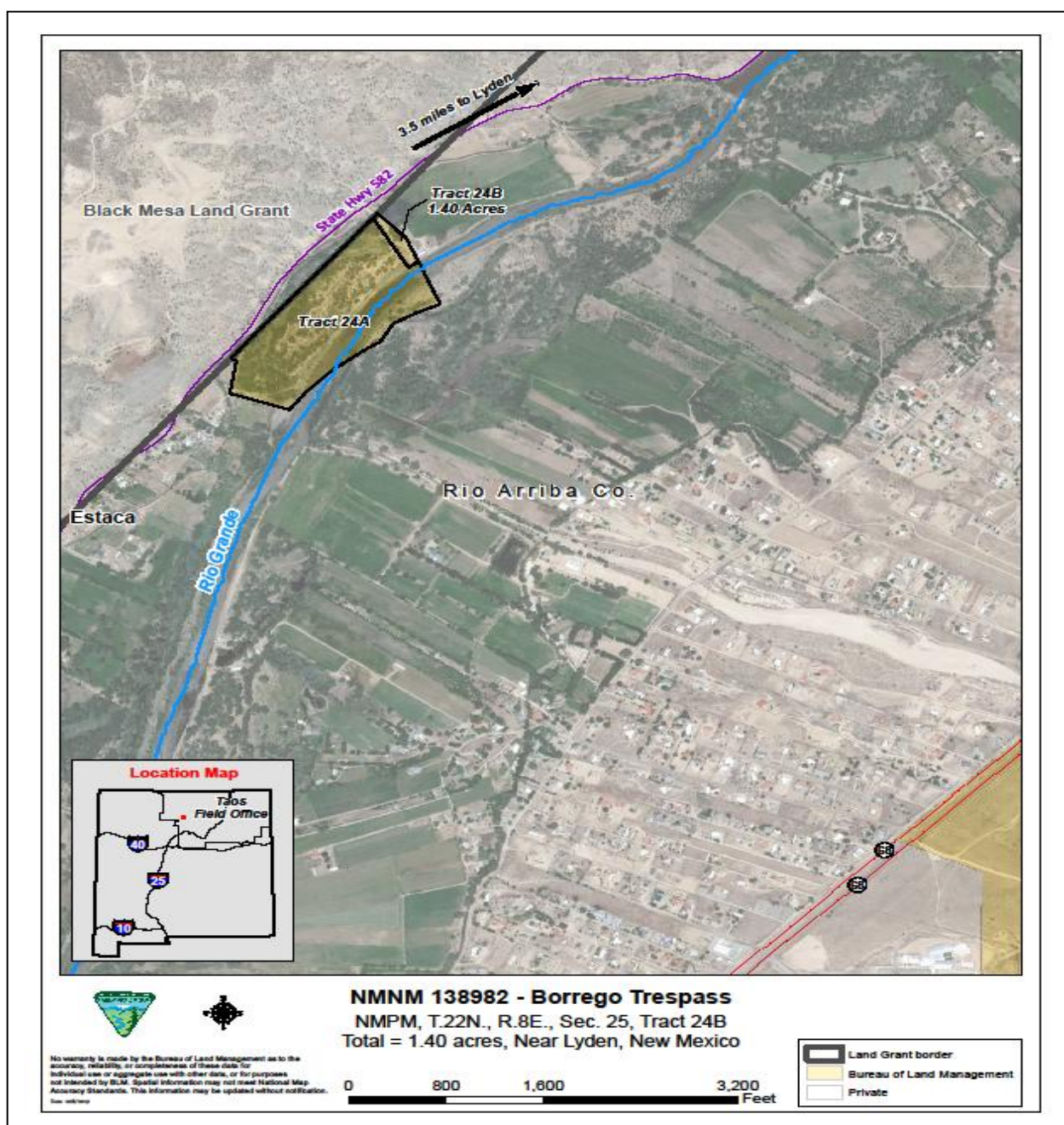
August 2022

# Borrogo Direct Sale

Environmental Assessment

DOI-BLM-NM-F020-2021-0018-EA

Rio Arriba County, New Mexico



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# CHAPTER 1. INTRODUCTION

## 1.1 Background

In 2015, a US District Court Judge ruled in favor of the United States of America as it found that Mr. Gilbert Borrego was in trespass on public lands managed by the Bureau of Land Management, Taos Field Office (BLM) along the Rio Grande in Rio Arriba County, New Mexico. The court found that Mr. Borrego was in trespass on 1.4 acres of public lands—Tract 24B—within a 34.5-acre parcel located adjacent to his private land. (See map on document cover.) Over a period of many years, Mr. Borrego had developed the 1.4 acres with an access road and various fixtures, and he had collected equipment and other items on the property. The U.S. District Court’s judgment had required Mr. Borrego to vacate the property.

Following this judgement, however, the two parties agreed to a settlement, allowing Mr. Borrego to continue to occupy the 1.4 acres. As part of the settlement agreement, Mr. Borrego transferred ownership of a parcel of private land within the Rio Grande del Norte National Monument in Taos County, New Mexico to the BLM. In turn, the BLM now proposes to sell the 1.4 acre tract in Rio Arriba County directly to Mr. Borrego.

The BLM’s proposal to sell the 1.4 acres of public lands to Mr. Borrego is the subject of this environmental analysis.

## 1.2 Purpose and Need

The purpose of the direct sale of the 1.4 acres of BLM lands is to resolve the trespass per the consent judgement 12 cv434 JB-GBW (dated May 6, 2015) in favor of the United States of America. The BLM’s proposal to sell the subject property is necessary to comply with the terms of the settlement agreement, thereby resolving the unauthorized occupancy (trespass) of public lands.

### **Decision to be made:**

The Authorized Officer—the Taos Field Manager—will decide whether or not to conduct the disposal of the subject parcel through a direct sale of the 1.4 acres.

## 1.3 Plan Conformance and Consistency with other Authorities

The proposed land disposal is in conformance with the 2012 Taos Resource Management Plan (RMP). Section 2.2.2.1 specifies that “. . . certain disposal opportunities may be considered on a case-by-case basis such as isolated parcels surrounded by private lands.” The proposal is consistent with other resource goals and objectives in the Taos RMP.

Disposal of public lands through sale actions is allowable on BLM-administered lands per Title II of FLPMA and the BLM regulations at 43 CFR 2700, at the discretion of the Secretary of the Interior or their delegated officer. FLPMA allows the disposal of tracts of public land that due to their location or other characteristics are difficult and uneconomic to manage as part of the public lands and are not suitable for management by another Federal department or agency. Regulations at 43 CFR 2711.3-3 allows for the use of a direct sale action when the public benefit would best be served by this type of disposal action. Examples include when the adjoining land ownership pattern and access indicate a direct

sale is appropriate, and when a need to resolve inadvertent unauthorized use or occupancy of the lands exists.

## 1.4 Identification of Issues

The BLM conducted internal scoping with its interdisciplinary team of resources specialists to identify relevant issues warranting analysis in this environmental assessment (EA). Based on these efforts involving a series of interdisciplinary meetings, the issues presented in Table 1.1 have been determined relevant to the analysis of this action.

**Table 1-1. Issues Identified for Detailed Analysis**

RESOURCE	ISSUE STATEMENT
Cultural Resources	Issue 1: Potential loss of cultural resources associated with the disposal of the subject parcel out of Federal ownership.
Threatened & Endangered Species	Issue 2: Potential indirect impacts as a result of ongoing activities occurring on adjacent private land to Designated Critical Habitat for the Southwestern Willow Flycatcher ( <i>Empidonax traillii extimus</i> ) and Proposed Critical Habitat for the Yellow-billed Cuckoo ( <i>Coccyzus americanus</i> ).

### 1.4.2 Issues Dismissed from Detailed Analysis

The BLM interdisciplinary team of resource specialist also gave consideration to other potential issues, but have ruled them out as relevant to the analysis of this action for reasons provided in Table 1-2.

**Table 1-2. Issues not Analyzed in Detail**

ISSUE STATEMENT	RATIONALE FOR DISMISSING
Potential impacts to BLM Sensitive Species' habitat?	No habitat exists within Tract 24B for BLM sensitive species. A field visit during the 2021 field season, which evaluated habitat for Taos springparsley ( <i>Cymopterus spellenbergii</i> ) and the monarch butterfly ( <i>Danaus plexippus</i> ), confirmed this determination. Therefore, no impacts are anticipated. See Appendix A.



## CHAPTER 2. ALTERNATIVES

### 2.1 Alternative A – Proposed Action

The proposed action is to dispose of 1.4 acres of public land—Tract 24B—through a direct sale per the terms of the settlement agreement discussed under section 1.1, above. The BLM would offer the subject parcel to Gilbert Borrego at fair market value using the direct (non-competitive) sale procedures pursuant to Section 203 and 209 of FLPMA and the BLM regulations in 43 C.F.R. 2700. The disposal of the 1.4 acre subject parcel in fee simple would allow the BLM to formally resolve the inadvertent trespass while allowing for better efficiencies in the management of the lands within the area. Mr. Borrego would be able to acquire and consolidate the subject parcel with his adjacent private property.

The disposal would include only the surface estate for the subject parcel described as follows:

New Mexico Principal Meridian  
T. 22 N., R. 8E,  
sec. 25, Tract 24B

The purchase price would be no less than fair market value determined by an appraisal completed under the direction of the Appraisal and Valuation Services Office (AVSO). Upon receipt of the purchase price, BLM would issue a patent to the subject parcel in the name of Gilbert Borrego. The patent would contain the following terms, conditions, and reservations:

- A reservation of right-of-way to the United States for ditches canals constructed by the authority of the United States under the Act of August 30, 1890, 43 U.S.C. 945;
- A condition that the conveyance be subject to all valid existing rights of record;
- A notice and indemnification statement under the Comprehensive Environmental Response, Compensation and Liability Act [42 U.S.C. 9620 (W)], indemnifying, and holding the United States harmless from any release of hazardous materials that may have occurred; and
- Additional terms and conditions that the authorized officer deems appropriate.

As an additional condition of the sale, the BLM would preclude direct, motorized access from Tract 24B to the remaining 34.5-acre parcel of public lands in order to reduce potential disturbances to the riparian and avian habitat. A fence would be maintained to prevent motorized travel between the two parcels.

#### 2.1.1 Design Features

The following project design features have been developed to minimize or eliminate potential impacts to resources from the proposed action. These features would be included as stipulations or conditions of approval of the direct sale.

- Replacement of the silver metal gate on the east side of Tract 24B with the continuation of welded metal pipe fence to close the area to the river to protect habitat along the Critical Habitat designation for the Southwestern willow flycatcher (*Empidonax traillii extimus*).

- No motorized access would be allowed from Tract 24B to the 34.5 acres of public lands to the south in order to protect Proposed Critical habitat for the Yellow-billed-Cuckoo (*Coccyzus americanus occidentalis*).

## 2.2 Alternative B – No Action Alternative

Under the No Action alternative, the subject parcel would remain unidentified for disposal and the BLM would not be allowed to offer the parcel for sale. The subject parcel would remain in Federal ownership and would be subject to all applicable Federal land laws and regulations. The BLM would resolve the trespass with the required removal of the existing fencing and rehabilitation of the disturbed areas with native vegetation. The No Action Alternative would not resolve the unauthorized occupancy (trespass) on public land and would force further court intervention with an adverse action against the BLM.

## 2.4 Alternatives Considered but Dismissed

### 2.4.1 Competitive Bid Method Disposal

The BLM's current policy and regulations for land sales [43 CFR 2710.0-6(c)(1-5)] require use of competitive sale procedures unless the authorized officer determines that public interest would best be served by modified competitive bidding or direct (non-competitive) sale. In this instance, Gilbert Borrego owns land that adjoins the subject parcel proposed for disposal. The subject parcel was thought by the Borrego family to have been in private ownership but was determined by the consent judgement and an Interior Board of Land Appeal decision [(Delfino J. and Clara M. Borrego, IBLA 88-448, 113 IBLA 209 (1990), reconsideration denied April 10, 1990)] that it was not in private ownership and the subject parcel is in federal ownership. This alternative was eliminated from detailed analysis because there is a need to recognize the adjoining ownership pattern and access as well as to resolve the trespass [43 CFR 2711.3-3(a) (4 & 5)].

## CHAPTER 3. ENVIRONMENTAL IMPACTS

This chapter describes (1) the affected environment, specifically the existing or baseline conditions relevant to each issue identified in Table 1-1, followed by (2) a description of the impacts projected to result from each alternative.

### 3.1 Issue 1: Potential loss of cultural resources associated with the disposal of the subject parcel out of Federal ownership.

#### 3.1.1 Affected Environment

The proposed undertaking has the potential to affect cultural resources by placing them out of reach of federal preservation law. The BLM must take these effects into account when making decisions relating to the disposal of this 1.4 acres.

The Area of Potential Effect (APE) is located on a flood plain in the Abiqui-Peralta complex soil map unit name (Web Soil Survey). Slope is 0-3 percent. A typical profile exhibits a silt loam over a fine sandy loam over extremely coarse and cobbly sand. As this is a federal undertaking, it is subject to Section 106 of the National Historic Preservation Act (NHPA). The APE was surveyed on August 6, 2019 by the BLM Taos Field Office Cultural Resources Specialist (NMCRIS Activity Number 143994). No cultural resources were observed during this investigation. If significant cultural resources are present, they are likely deeply buried as the 1.4 acres are located in a flood plain environment.

In addition, in 1967 the Army Corp of Engineers built a levy on what appears today to be on the uplands between the north bank of the Rio Grande and private property belonging to Mr. Borrego. This levy was built to protect private property and BLM public land from flooding during high flows in the Rio Grande, but inevitably altered the landscape along the river. If any disturbance associated with the construction of the levy extended onto Tract 24B or the adjacent public lands, the riverbank is likely altered to the extent that any context for historic properties that might have been present along the river would be lost.

#### 3.1.2 Environmental Impacts

##### 3.1.2.1 Impacts of Alternative A – Proposed Action

The APE has been heavily disturbed by activities associated with the trespass. If significant cultural resources were present, the disturbance has likely adversely affected them to the point where the resources lack the level of integrity needed to be considered for listing on the National Register of Historic Places.

##### 3.1.2.2 Impacts of Alternative B – No Action Alternative

This alternative has no potential to affect cultural resources.



## 3.2 Issue 2: Potential indirect impacts as a result of ongoing activities occurring on private land adjacent to Designated Critical Habitat for the Southwestern Willow Flycatcher (*Empidonax traillii extimus*) and Proposed Critical Habitat for the Yellow-billed Cuckoo (*Coccyzus americanus occidentalis*).

### 3.2.1 Affected Environment

Seven federally endangered or threatened species have the potential to occur in Rio Arriba County—see Appendix A. There is no habitat within the direct sale parcel for any of these species due to the size of and disturbance in this parcel. However, the parcel is in close proximity to critical habitat designated for the Southwestern willow flycatcher and proposed critical habitat for the Yellow-billed cuckoo. Final ruling on the critical habitat for the flycatcher was established by the U.S. Fish and Wildlife Service (USFWS) in October 2005 (Federal Register {FR} Vol. 70, No.201). Final ruling on the proposed critical habitat for the cuckoo was established by the USFWS in August 2014 (Federal Register {FR} Vol. 79, No.158).

As discussed under section 3.1.1, a levy was built along the Rio Grande in 1967, which altered the riparian habitat along the bank of the river. Since the building of the levy, the riparian habitat occurs to the east of the levy along the Rio Grande and not on the agricultural uplands. The flycatcher has designated USFWS critical habitat located east of Tract 24B, and south of Tract 24B is proposed USFWS critical habitat for the Yellow-billed cuckoo.

The adjacent 34.5-acre block of BLM land to the south of the direct sale parcel is being accessed by Mr. Borrego via a gate next to his private property entrance. Mr. Borrego established a road for motorized use that he does not have a right-of-way. The trespass occurring on BLM lands south of Tract 24B could contribute to a reduction in numbers and a reduction in distribution for the cuckoo if motorized use continued in this area.

This land is considered upland habitat and currently used as agricultural farmland. The adjacent private agricultural fields may provide foraging habitat for cuckoos inhabiting the area.

### 3.2.2 Environmental Impacts

#### 3.2.2.1 Impacts of the Alternative A – Proposed Action

The encroached upon property's southeastern-most boundary is adjacent to designated USFWS critical habitat for the Southwestern willow flycatcher (*Empidonax traillii extimus*) and proposed USFWS critical habitat for the Yellow-billed cuckoo (*Coccyzus americanus*).

Following the direct sale, the BLM does not anticipate any change in use nor does the parcel contain any primary constituent elements associated with breeding or nesting habitat for the flycatcher. Implementation of the design features may beneficially affect the cuckoo by reducing disturbance to adjacent habitat.

It is determined that the encroachment onto Tract 24B does not alter or affect the riparian vegetation along the river corridor nor adjacent cottonwoods, therefore there would be a “No Affect” determination for both the flycatcher and the cuckoo. No physical or biological factors would be altered for the

proposed and critical habitat designations. See Appendix A for additional information on the determination of effects.

#### 3.2.2.2 Impacts of the Alternative B – No Action

The adjacent block of BLM land to the south of the direct sale parcel is being accessed by Mr. Borrego via a gate next to his private property entrance. Mr. Borrego established a road for motorized use that he does not have a right-of-way. This parcel is within the proposed critical habitat for the cuckoo. The trespass could contribute to a reduction in numbers and a reduction in distribution for the cuckoo if motorized use continued in this area.

## CHAPTER 4. CONSULTATION AND COORDINATION

### 4.1 Summary of Consultation and Coordination

The BLM Taos Field Office mailed letters to 14 tribes seeking input, with no comments received for the proposed project. See Table 4.1.

**Table 4.1**

Comanche Nation	Pueblo of Pojoaque
Hopi Tribe	Pueblo of San Ildefonso
Jicarilla Apache Nation	Pueblo of Santa Clara
Kiowa Tribal of Oklahoma	Pueblo of Taos
Navajo Nation	Pueblo of Tesuque
Pueblo of Ohkay Owingeh	Pueblo of Zia
Pueblo of Picuris	Southern Ute Tribe

The BLM initiated Endangered Species Act Section 7 informal consultation with the USFWS with a “No Effect” determination. The BLM also initiated NHPA Section 106 formal consultation with the New Mexico State Historic Preservation Office with a no potential affect to cultural resources.

### 4.3 List of Preparers

Chris Anderson, Archaeologist, Taos Field Office  
Pam Olivas-Herrera, Biologist, Taos Field Office  
Brad Higdon, Planning and NEPA, Taos Field Office  
Mark T. Lujan, Realty Specialist, Taos Field Office  
Nik MacPhee, Ecologist/Botanist, Taos Field Office

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## Appendix A.

### Federally Listed Threatened or Endangered Species

Federally listed species with potential to occur adjacent to Tract 24B are the Southwestern willow flycatcher, and the yellow-billed cuckoo.

The encroached upon property's south easternmost boundary is adjacent to Designated Critical Habitat for the Southwestern willow flycatcher (*Empidonax traillii extimus*) and Designated Critical Habitat for the Yellow-billed Cuckoo (*Coccyzus americanus*).

In October 2005, the USFWS designated critical habitat for the flycatcher along the Rio Grande, including the area adjacent to Tract 24B. The Rio Grande River is east of Tract 24B and riparian vegetation exists to the west between the river and this tract and along the Rio Grande. In April 2021, the USFWS designated critical habitat for the cuckoo also adjacent to Tract 24B. Overstory cottonwood trees and dense riparian habitat exists adjacent to Tract 24B but not within this Tract. It is determined that the encroachment onto Tract 24B does not affect or alter the riparian vegetation along the river corridor nor adjacent cottonwoods, therefore there would be a "No Affect" determination for the flycatcher and the cuckoo, and potential effects to the critical habitat designations.

Federally Threatened or Endangered Species List for Rio Arriba County (Fish and Wildlife Service 2021).

Species	Habitat Occurrence (Present, Not Present, or Potential to be Present but not affected)	Comments/Effect Determination
<b>Mexican spotted owl</b> ( <i>Strix occidentalis lucida</i> )  <b>THREATENED (CH)</b>	Not present	Tract 24B lacks preferred mature or old-growth trees and complex forest structure. <b>Therefore, the proposed action will have <u>no effect</u> on this species.</b>
<b>Southwestern willow flycatcher</b> ( <i>Empidonax traillii extimus</i> )  <b>ENDANGERED (CH)</b>	Potential to be Present but not affected	Designated Critical habitat occurs adjacent to Tract 24B and may provide stopover habitat during migration by this species. This habitat will not be impacted by the potential sale nor does it occur within Tract 24B. <b>Therefore, the proposed action will have <u>no effect</u> on this species.</b>
<b>Yellow-billed cuckoo</b> ( <i>Coccyzus americanus</i> )  <b>THREATENED (CH)</b>	Potential to be Present but not affected	Although there is potential habitat adjacent to Tract 24B, Tract 24B lacks the preferred structure of overstory cottonwood trees and contiguous stands of riparian habitat greater than 81 hectares in size. <b>Therefore, the proposed action will have <u>no effect</u> on this species.</b>

Species	Habitat Occurrence (Present, Not Present, or Potential to be Present but not affected)	Comments/Effect Determination
<b>Least Tern</b> ( <i>Sterna antillarum</i> )  <b>ENDANGERED</b>	Not present	Habitat adjacent to Tract 24B and the property itself lacks sparsely vegetated sandbars preferred by this species for nesting. <b>Therefore, the proposed action will have <u>no effect</u> on this species.</b>
<b>Canada lynx</b> ( <i>Lynx canadensis</i> )  <b>THREATENED (CH)</b>	Not present	Tract 24B is lower in elevation than the preferred habitat of spruce/fir forest. Parcel also lacks adequate snowshoe hare prey base typically associated with this species. <b>Therefore, the proposed action will have <u>no effect</u> on this species.</b>
<b>New Mexico meadow jumping mouse</b> ( <i>Zapus hudsonius luteus</i> )  <b>ENDANGERED (CH)</b>	Not present	Although potential habitat occurs adjacent to Tract 24B Tract 24B itself does not contain preferred riparian habitat with dense herbaceous vegetation. <b>Therefore, the proposed action will have <u>no effect</u> on this species.</b>
<b>Jemez Mountains Salamander</b> ( <i>Plethodon neomexicanus</i> )  <b>ENDANGERED (CH)</b>	Not present	Tract 24B lacks high elevation mixed-conifer forest consisting of fir, spruce, pine, maple, and aspen. <b>Therefore, the proposed action will have <u>no effect</u> on this species.</b>

**Special Status Species considered in the analysis**

There is no habitat within Tract 24B for the following BLM sensitive species.

Species	Status	Potential for Occurrence in Project Area	Comments
<b>Gunnison's prairie dog</b> ( <i>Cynomys gunnisoni</i> )	BLM S	Not present.	Tract 24B lacks preferred grassland and short grass prairie habitat. No impact.
<b>Burrowing owl</b> ( <i>Athene cunicularia hypugaea</i> )	BLM S	Not present.	Tract 24B lacks preferred grassland and short grass prairie habitat. No impact.
<b>Pinyon jay</b> ( <i>Gymnorhinus cyanocephalus</i> )	BLM S	May occur adjacent to the project area.	Tract 24B lacks suitable piñon-juniper habitat associated with this species. No impact.

Species	Status	Potential for Occurrence in Project Area	Comments
<b>Virginia's Warbler</b> ( <i>Vermivora virginiae</i> )	BLM S	Unlikely to occur.	There are no mixed woodlands with steep draws, drainages, or slopes with oak or associated shrubby vegetation. No impact.
<b>Mexican Whip-poor-will</b> ( <i>Antrostomus arizonae</i> )	BLM S	Not Present.	Tract 24B lacks ponderosa pine or pine-oak woodlands. No impacts are anticipated from the proposed action
<b>Chestnut collared longspur</b> ( <i>Calcarius ornatus</i> )	BLM S	Not Present.	Tract 24B lacks grassland habitat and shortgrass prairie habitat. No impact.
<b>Spotted bat</b> ( <i>Euderma maculatum</i> )	BLM S	Unlikely to occur. Suitable roosting and foraging habitat may occur adjacent to the project area.	May roost in adjacent piñon-juniper woodlands and crevices in cliffs or under loose rocks, and rocky areas. It may also use the Rio Grande as a travel corridor. No impacts are anticipated from the sale of Tract 24B.
<b>Pale Townsend's big-eared bat</b> ( <i>Plecotus townsendii pallescens</i> )	BLM S	Unlikely to occur adjacent to project area.	Main threat is destruction or disturbance of roost sites mainly caves or mines. In the summer can be found in piñon-juniper forests. No impacts are anticipated from the sale of Tract 24B.
<b>Monarch butterfly</b> ( <i>Danaus plexippus plexippus</i> )	BLM S, Federal Candidate	May occur adjacent to the project area.	Tract 24B lacks preferred habitat such as milkweed typically associated with this species. No impacts are anticipated from the sale of Tract 24B.
<b>Rio Grande Chub</b> ( <i>Gila pandora</i> )	BLM S	Not present.	The Rio Grande occurs adjacent to Tract 24B. No impact.
<b>Rio Grande Sucker</b> ( <i>Catostomus plebeius</i> )	BLM S	Not present.	The Rio Grande occurs adjacent to Tract 24B. No impact.
<b>Northern Leopard Frog</b> ( <i>Lithobates (Rana) pipiens</i> )	BLM S	Not Present.	Although Tract 24B is within the range for the species, habitat is not present. No impact.
<b>Clipped wild buckwheat</b> ( <i>Eriogonum lachnogynum</i> var. <i>colobum</i> )	BLM S	Not Present	No habitat present. No impact.



Species	Status	Potential for Occurrence in Project Area	Comments
<b>Taos Springparsley</b> ( <i>Cymopterus spellenbergii</i> )	BLM S	Not Present	Survey efforts in modeled habitat resulted in no detections for the species. No impact.
<b>Ripley's Milkvetch</b> ( <i>Astragalus Ripleyi</i> )	BLM S	Not Present	No habitat present. No impact.
<b>Rio Chama Blazing Star</b> ( <i>Mentzelia conspicua</i> )	BLM S	Not Present	No habitat present. No impact.
<b>Galisteo Sand Verbena</b> ( <i>Abronia bigelovii</i> )	BLM S	Not Present	No habitat present. No impact.